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# A.G. Electric and International Brotherhood of Electrical Workers, Local No. 481, a/w International Brotherhood of Electrical Workers, AFL-CIO-CLC. Case 25-CA-22468

January 23, 1995

## **DECISION AND ORDER**

# By Members Browning, Cohen, and Truesdale

Upon a charge and an amended charge filed by the International Brotherhood of Electrical Workers, Local No. 481, a/w International Brotherhood of Electrical Workers, AFL—CIO—CLC (the Union) on April 16 and June 4, 1993, respectively, the Regional Director for Region 25 of the National Labor Relations Board issued a complaint and an amended complaint on May 28 and June 29, 1993, respectively, against A.G. Electric, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. On June 11 and July 12, 1993, respectively, the Respondent filed answers to the complaint and amended complaint admitting in part and denying in part the allegations therein.

Thereafter, on October 15, 1993, the Regional Director approved an informal settlement agreement entered into by the Respondent and the Union, in disposition of the amended complaint. On September 22, 1994, however, the Regional Director issued an order revoking the settlement, and a new complaint realleging the same allegations contained in the amended complaint, on the ground that the Respondent had failed to comply with the settlement agreement.

Although properly served copies of the September 22, 1994 complaint, the Respondent failed to file an answer thereto. Accordingly, on December 19, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On December 22, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

### Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, un-

less good cause is shown. In addition, the September 22, 1994 complaint affirmatively noted that unless an answer was filed within 14 days of service, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated December 1, 1994, notified the Respondent that unless an answer were received by close of business December 9, 1994, a Motion for Summary Judgment would be filed. Nevertheless, as indicated above, the Respondent failed to file an answer to the September 22, 1994 complaint.

Although the Respondent did file answers to the original complaint and amended complaint, those answers were withdrawn by the explicit terms of the settlement agreement, and were not thereafter revived by the Regional Director's September 22, 1994 complaint. Thus, as the Respondent's answers to the original complaint and amended complaint do not remain extant, they do not preclude summary judgment.

Accordingly, in the absence of good cause being shown for the failure to file a timely answer to the September 22, 1994 complaint, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

### FINDINGS OF FACT

#### I. JURISDICTION

At all material times the Respondent, a corporation, with an office and place of business in Indianapolis, Indiana, has been engaged as an electrical contractor in the construction industry. During the 12-month period ending April 30, 1993, the Respondent, in conducting its business operations, provided services valued in excess of \$50,000 for TJR Contractors, an enterprise within the State of Indiana. At all material times TJR Contractors, a corporation, with an office and place of business in Greenwood, Indiana and a jobsite in Greensburg, Indiana, has been engaged as a general contractor in the construction industry. During the 12month period ending April 30, 1993, TJR Contractors, in conducting its business operations, purchased and received at its Greensburg, Indiana jobsite goods valued in excess of \$50,000 directly from points outside the State of Indiana.

We find that the Respondent and TJR Contractors are employers engaged in commerce within the mean-

<sup>&</sup>lt;sup>1</sup>We take administrative notice that the settlement form used by the parties was NLRB Form 4775, the standard informal settlement agreement, which expressly provides that approval of the settlement agreement "shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in this case, as well as any answer(s) filed in response." (Emphasis added.)

<sup>&</sup>lt;sup>2</sup> See Orange Data, Inc., 274 NLRB 1018 (1985); Ofalco Properties, 281 NLRB 84 (1986); and Signage Systems, 312 NLRB 1115 (1993).

ing of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

About January 22, 1993, the Respondent's owner Jerry Koenig, by telephone, interrogated applicants for employment about their union membership, activities, and sympathies.

About January 25, 1993, Koenig, by telephone, told applicants for employment that the Respondent would not hire applicants with a union background.

About January 25, January 29, and March 8, 1993, Koenig, by telephone, told applicants for employment the reason that they were not hired was because of their union background.

About January 25, 1993, the Respondent refused to hire Richard Ferguson, because he formed, joined, or assisted the Union and engaged in concerted activities and because the Respondent believed he would engage in such activities and conduct, and to discourage employees from engaging in these activities.

## CONCLUSIONS OF LAW

By interrogating applicants and telling them that it would not hire applicants with a union background and that they were not hired because of their union background, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act. By discriminatorily refusing to hire Richard Ferguson, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) of the Act by discriminatorily refusing to hire Richard Ferguson, we shall order the Respondent to offer him immediate employment and to make him whole for any lost earnings and other benefits suffered as a result of this discrimination against him. Backpay shall be computed in accordance with F. W. Woolworth Co., 90 NLRB 289 (1950), with interest as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).

### **ORDER**

The National Labor Relations Board orders that the Respondent, A.G. Electric, Indianapolis, Indiana, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Interrogating applicants about their union membership, activities, or sympathies.
- (b) Telling applicants that it would not hire applicants with a union background and that they were not hired because of their union background.
- (c) Refusing to hire employees because of their membership in, or activities on behalf of, any labor organization or because they engage in other protected concerted activity, or to discourage employees from engaging in such activities.
- (d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Offer Richard Ferguson immediate employment in the same position in which he would have been hired in the absence of discrimination against him or, if that position no longer exists, in a substantially equivalent position, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.
- (b) Remove from its files any reference to the unlawful refusal to hire and notify the employee in writing that this has been done and that action will not be used against him in any way.
- (c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.
- (d) Post at its facility in Indianapolis, Indiana, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Re-

<sup>&</sup>lt;sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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spondent to ensure that the notices are not altered, defaced or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. January 23, 1995

Margaret A. Browning,	Member
Charles I. Cohen,	Member
John C. Truesdale,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

### **APPENDIX**

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT interrogate applicants about their union membership, activities, or sympathies.

WE WILL NOT tell applicants that we will not hire applicants with a union background nor that they were not hired because of their union background.

WE WILL NOT refuse to hire employees because of their membership in or activities on behalf of any labor organization or because they engage in other protected concerted activity, or to discourage employees from engaging in such activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer Richard Ferguson immediate employment in the same position in which he would have been hired in the absence of discrimination against him or, if that position no longer exists, in a substantially equivalent position, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, plus interest.

WE WILL notify him that we have removed from our files any reference to our unlawful refusal to hire and that action will not be used against him in any way.

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